

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 2331 TO 2337 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

EXECUTIVE ENGINEER

Versus

CHAMPRAJBHAI NAJBHAI

Appearance:

Mr M R Rawal, AGP for Petitioners
MR NITIN M AMIN for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 26/03/99

ORAL JUDGEMENT

All these Appeals which are instituted under Section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedures, 1908 are directed against the common judgment and award dated December 4, 1996 rendered by learned Asstt. District Judge, Amreli in Land Reference Case Nos. 76/94 to 82/94. Land Reference Case No.78/94 was treated as main

case and parties had led common evidence therein. The lands belonging to the respondents were placed under Acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act on June 17, 1993. As common questions of fact and law are involved in these Appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire agricultural lands of village Nadhanvadar, Taluka Babra, District Amreli for public purpose of constructing Anushravan pond was received by the State Government. On verification of the said proposal, the State Government was satisfied that agricultural lands of village Nadhanvadar were likely to be needed for the said public purpose. Accordingly Notification under section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued which was published in official Gazette on June 17, 1993. The lands which were proposed to be acquired were specified in the said notification. The land owners whose lands were proposed to be acquired were served with notices under section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Amreli had forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands specified in the notification published under section 4(1) of the Act were needed for public purpose of constructing Anushravan pond. Therefore, declaration under section 6 of the Act was made, which was published in the official Gazette on 17.9.1993. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/per sq.metre, but having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated 31.3.1994 offered compensation to the claimants at the rate of Rs.2/- per sq.metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of appropriate compensation. Accordingly references were made to the District Court, Amreli, which were numbered as Land Reference Case Nos. 76/94 to 82/94. In the Reference Applications, it was pleaded by the claimants that the Land Acquisition Officer had not taken into consideration the prevailing price of lands situated near

the acquired lands, and therefore, they should be granted higher compensation. What was claimed by the claimants was that the acquired lands, were highly fertile and having regard to the income derived by the claimants from crops, they should be paid compensation at the rate of Rs.30/- per sq.metre. The appellants had contested the Reference Applications by filing reply at Exh.16. In the reply it was averred that the Special Land Acquisition Officer had taken into consideration the relevant factors such as situations of the lands acquired, prevailing price of the lands at the relevant date, income derived by the claimants from the sale of agricultural produces etc., and therefore, the Reference Applications should be dismissed. In order to substantiate the claim advanced in the Reference Applications, claimants examined -

- (i) Dadubhai Khodabhai at Exh.21
- (ii) Shambhubhai KJaramshi at Exh.35 and
- (iii) Jilubhai Champrajbhai at Exh.38

The appellants also examined three witnesses i.e.

- (i) Burhanbhai Malle Abbhas at Exh.42
- (ii) Dhirajlal Nanjibhai at Exh.48 and
- (iii) Premji Nanjibhai at Exh.51

Witness Dadhubhai Khodabhai was claimant in Land Reference case No.82/94. He testified before the Court that the acquired lands were irrigated lands and claimants were taking two crops of groundnut and jeeru in a year. According to the said witness, the yield of groundnut was 20 maunds per vigra per year and that of jeeru was 12 maunds per vigra per year. The witness stated before the Court that price of groundnut at the relevant time was Rs.200/- per 20 kg. and that of jeeru was Rs.2,500/- per 20 kg. The witnesses asserted that the claimants were earning profit of Rs.40,000/- per year after deducting 1/3 amount spent by them towards cost of cultivation. The witness claimed that Village Nodhan Vadar was developed and all basic facilities were available in the said Village. In cross-examination, the witness denied the suggestion made on behalf of the appellants that the lands were not irrigated lands. The witness admitted during his cross-examination that claimants had not maintained any books of accounts to establish income derived by them from the sale of agricultural produces or expenses incurred by them for cultivation. Witnesses Shambhubhai Karamshi examined at Exh.35 was, at the relevant time, serving as Secretary of Agricultural Produce Market Committee, Jasdan. The witness stated before the Court that the Committee was

selling agricultural produces received from the farmers by auction sale. According to this witness, the Agricultural Produce Market Committee used to publish Annual Report indicating the quantity of crops received and the prices at which the crops were sold. The witness produced the Annual Report for the year 1991-92 at Exh.36. Annual Report for the year 1992-93 was produced by this witness at Exh.37. In his cross-examination, the witness stated that there were different varieties of groundnut and price of groundnut differed having regard to its quality. The witness also stated in his cross-examination that the farmers were selling their yield through agents and that he himself had never auctioned crops sold by the farmers. Witness Jilubhai Champrajbhai examined at Exh.38 was claimant in Land Reference Case No.80/94. According to this witness, he was taking two crops namely; groundnut and wheat in a year. As per this witness, he was able to yield 20 maunds of groundnut per vigha per year and price of groundnut was Rs.200/- per 20 kg. at the relevant time. The witness further asserted that he was able to raise 50 maunds of wheat and price of wheat at the relevant time was Rs.100/- per 20 kgs. According to this witness the claimants were earning about Rs.9,000/- to Rs.10,000/per year by way of profit after deducting the cost of cultivation. In cross-examination, the witness stated that fertility of the lands belonging to all the farmers was not the same and yield was also not the same. The witness admitted that price of groundnut was not the same all throughout and the same depended upon the quality of the groundnut. This witness also admitted that he had no books of accounts to establish the yield of crop or the income derived from the crops. Witness Burhanbhai Malle Abbhas examined at Exh.42 was, at the relevant time, serving in Zilla Panchayat, Rajkot. This witness had prepared rojkam relating to the acquired lands and he produced the same at Exh.43. This witness also produced map of the lands acquired at Exh.44. Witness Dhirajlal Nanjibhai who was examined at Exh.48 had initiated acquisition proceedings and was Special Land Acquisition Officer, who had made the award determining the market value of the acquired lands @ Rs.2/- per sq.metre. However, we may state that his evidence is of no assistance in determining the market value of the acquired lands. Witness Premji Nanjibhai examined at Exh.51 was resident of Village Santhali. He produced two sale deeds at Exhs. 52 and 53 for sale of land bearing survey No.491/2 to Pansuria Haribhai who was resident of village Gorkhan. The witness admitted in his examination-in-chief that village Santhali was in Jasdan Taluka, whereas village Nadhanvadar from which the lands

were acquired in the present case was in Babra Taluka and both the villages were in different Districts. Witness also admitted that the lands which were the subject matter of sale deeds exh.52 and 53, were situated far away from the acquired lands and the lands sold had several pits. The witness also admitted that because of scanty rains it was not possible to raise any crops on the lands which were sold by Exh.52 and 53. The witness further admitted that agricultural lands on village Nadhanvadar which were acquired, were more fertile than the lands which were sold by Exh.52 and 53 and were also irrigated lands.

3. On appreciation of evidence led by the parties, the Reference Court held that the best evidence namely; sale instances relating to the acquired lands or similar lands situated near the acquired lands was not available for the purpose of determining the market value of the acquired land, and therefore, the market value of the acquired lands should be determined on yield basis. The Reference Court, thereafter, took into consideration the claims made by the claimants regarding yield of crops and the income derived from the sale thereof. The Reference Court deduced that each claimant was earning Rs.8200/per year by way of sale of groundnut and wheat and deducted 1/3 amount which would have been spent by them as cost of cultivation. The Reference Court held that they were earning Rs.5,500/- per year from sale of agricultural produces. The Reference Court was of the opinion that having regard to the weather and uncertainties of nature, further deduction of 10% was required to be made and in ultimate decision has held that market value of the acquired lands on the relevant date was Rs.20/- per sq.metre by the impugned common judgment, giving rise to the present appeals.

4. Mr M R Rawal, Learned A.G.P. for the Government submitted that the cultivation of the lands acquired was mainly based on rain, and therefore, the Reference Court was not justified in holding that the pattern of crop in the lands acquired was similar. Learned Advocate for the Appellants submitted that the market value of the acquired lands ought to have been determined with reference to the sale deeds produced at Exh.52 and 53 by witness Premjibhai, and therefore, the impugned judgment should be set aside. What was stressed by the learned Advocate for the Appellants was that no cogent and reliable evidence was led by the claimants regarding yield of crops, and therefore, determination of market value of the acquired lands which is based on yield method, should be set aside by the Court. In the

alternative, it was also claimed that in view of various decisions of the Supreme Court, 50% ought to have been deducted from the income of crops towards cost of cultivation and as the Reference Court has committed error in calculation, the Appeals should be allowed.

5. Mr Nitin M Amin, learned Advocate for the claimants pleaded that the sale instances covered by Exhs.52 and 53 were neither comparable nor relevant for the purpose of determining market value of the acquired lands, and therefore, the Reference Court was justified in determining market value of the acquire lands on yield basis. It was further submitted by the learned Advocate that the lands acquired were highly fertile as well as irrigated lands, and therefore, the just amount of compensation determined by the Reference Court should not be disturbed by the Court in the present group of Appeals.

6. We have heard the learned Advocates for the parties at length as well as we have taken into consideration the record of the case. It is true that witness, Premjibhai Nanjibhai examined by the present appellants at Exh.51 had produced two sale deeds at Exhs.52 and 53 relating to survey No.491/2 of Village Santhali. However, evidence of witness Premji Nanjibhai makes it clear that the lands sold were far away from the acquired lands and were situated in altogether a different Taluka. Moreover, as admitted by this witness, the lands sold did not yield anything and had several pits. This witness, in terms, admitted that the acquired lands were better in quality than the lands which were sold by sale deeds produced at Exh.52 and 53. He also admitted during his examination that the acquired lands were irrigated lands and claimants were taking 2 to 3 crops in a year. What was stated by the witness was that the lands sold by Exhs.52 and 53 were yielding nothing, and therefore, they were sold at a lesser price. The methods of valuation are :

(i) Opinion of experts

(ii) The price paid within a reasonable time
in bona fide transactions of purchase or
sale of the lands acquired or of the
lands adjacent to those acquired and
possessing similar advantages, and

(iii) No. of year's purchase of the actual or
immediately prospective profits of the
lands acquired.

Normally, the method of capitalising the actual or

immediately prospective profits or the rent of number of year's purchase is not resorted to, if there is evidence of comparable sales or other evidence for computation of the market value. The best evidence of value of property is the sale transaction in respect of the acquired lands to which the claimant himself is a party and in absence of such a sale deed relating to the acquired lands, the sale transactions relating to the neighbouring lands in the vicinity of the acquired lands. In that case, the features required to be presented before the Court are-

- (i) It must be within a reasonable time of the date of the Notification,
- (ii) It must be a bona fide transaction,
- (iii) It must be a sale of land similar to the land acquired or the land adjacent to the lands acquired and
- (iv) It should possess similar advantageous features.

So far as the facts and circumstances of the present cases are concerned, the Appellants failed to establish that the lands which were sold by Exhs. 52 and 53 were adjacent to the lands acquired or that they possessed similar advantageous features. The evidence of witness Premji Nanjibhai would indicate that he had to sell this land at a throw away price because the lands were yielding nothing. Moreover, the lands sold had several pits therein. Exhs. 52 and 53, and other sale instances produced by the parties were not relevant at all to enable the Reference Court to determine the market value of the acquired lands. As Exhs. 52 and 53 were not comparable sale instances, the Reference Court was justified in not placing reliance on them while determining the market value of the acquired lands. In view of this position, the Reference Court was left with no option but to determine market value of the acquired lands on yield basis. In the case of State of Gujarat & Ors. v. Rama Rana & Ors., reported in 1997 (3) GLR 1954, the Supreme Court has emphasized that the Court has statutory duty to the society to subject the oral evidence to great scrutiny and thereafter to determine the just market value of the lands in cases of compulsory acquisition of the lands. If evidence led by the claimants is subjected to minute scrutiny, it becomes evident that the yield of wheat per vigra per year was 50 maunds and the price thereof at the relevant time was Rs.87/- per 20 Kgs. It means that the gross income of the claimants from sale of wheat was Rs.4,350/- per vigra per year. Similarly, the evidence led by the claimants establishes that yield of groundnut was 20 maunds per

vigha per year and price thereof at the relevant time was Rs.194/- per 20 Kg. That means, the gross income of each claimants from the sale of groundnut was Rs.3,880/- per vigha per year. If the gross income derived by the claimants from the two crops is totalled, the figure would be Rs.8,230/-. By now it is well settled that while determining market value of the acquired lands on yield basis, 50% should be deducted towards the cost of cultivation and multiplier of 10 should be applied. Applying the said formula, we are of the view that the market value of the acquired lands would be Rs.17.14 paise which is rounded off to Rs.17/- per sq.metre. The Special Land Acquisition Officer, by his award dated 31.3.1994, had awarded compensation to the claimants at the rate of Rs.2/- per sq.metre, and therefore, in our view, the claimants would be entitled to additional compensation at the rate of Rs.15/- per sq.metre. Under the circumstances, the Appeals filed by the appellants deserve to be accepted in part.

7. For the foregoing reasons, the appeals partly succeed. It is held that the claimants would be entitled to additional amount of compensation at the rate of Rs.15/- per sq.metre. Rest of the directions given by the Reference Court regarding payment of additional compensation under Section 23(1-A) and solatium under Section 23(2) as well as interest under section 34 of the Act are not disturbed and are hereby upheld. There shall be no order as to costs.

Office is directed to draw decree in terms of this judgment.

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msp.